

AMENDED IN ASSEMBLY APRIL 4, 2000

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2203**

**Introduced by Assembly Member Baldwin**

February 24, 2000

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An act to amend Section 243.4 of the Penal Code, relating to battery.

LEGISLATIVE COUNSEL'S DIGEST

AB 2203, as amended, Baldwin. Sexual battery.

Existing law makes it a misdemeanor for any person to touch an intimate part of another person, if the touching is against the will of the person touched, and is for the specific purpose of sexual arousal, sexual gratification, or sexual abuse. Existing law makes it a misdemeanor or a felony for any person to touch an intimate part of another person while that person is unlawfully restrained by the accused or an accomplice, and if the touching is against the will of the person touched and is for the purpose of sexual arousal, sexual gratification, or sexual abuse.

This bill would make it *an offense punishable as a misdemeanor or a felony* for any person to enter an inhabited dwelling without consent and to touch an intimate part of another person, whether that person is unlawfully restrained by the accused or an accomplice or not, and if the touching is against the will of the person touched and is for the purpose of sexual arousal, sexual gratification, or sexual abuse. By

creating a new crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 243.4 of the Penal Code is  
2 amended to read:  
3 243.4. (a) Any person who touches an intimate part  
4 of another person while that person is unlawfully  
5 restrained by the accused or an accomplice, and if the  
6 touching is against the will of the person touched and is  
7 for the purpose of sexual arousal, sexual gratification, or  
8 sexual abuse, is guilty of sexual battery. A violation of this  
9 subdivision is punishable by imprisonment in a county jail  
10 for not more than one year, and by a fine not exceeding  
11 two thousand dollars (\$2,000); or by imprisonment in the  
12 state prison for two, three, or four years, and by a fine not  
13 exceeding ten thousand dollars (\$10,000).  
14 (b) Any person who touches an intimate part of  
15 another person who is institutionalized for medical  
16 treatment and who is seriously disabled or medically  
17 incapacitated, if the touching is against the will of the  
18 person touched, and if the touching is for the purpose of  
19 sexual arousal, sexual gratification, or sexual abuse, is  
20 guilty of sexual battery. A violation of this subdivision is  
21 punishable by imprisonment in a county jail for not more  
22 than one year, and by a fine not exceeding two thousand  
23 dollars (\$2,000); or by imprisonment in the state prison  
24 for two, three, or four years, and by a fine not exceeding  
25 ten thousand dollars (\$10,000).  
26 (c) Any person who, for the purpose of sexual arousal,  
27 sexual gratification, or sexual abuse, causes another,

1 against that person's will while that person is unlawfully  
2 restrained either by the accused or an accomplice, or is  
3 institutionalized for medical treatment and is seriously  
4 disabled or medically incapacitated, to masturbate or  
5 touch an intimate part of either of those persons or a third  
6 person, is guilty of sexual battery. A violation of this  
7 subdivision is punishable by imprisonment in a county jail  
8 for not more than one year, and by a fine not exceeding  
9 two thousand dollars (\$2,000); or by imprisonment in the  
10 state prison for two, three, or four years, and by a fine not  
11 exceeding ten thousand dollars (\$10,000).

12 (d) (1) Any person who touches an intimate part of  
13 another person, if the touching is against the will of the  
14 person touched, and is for the specific purpose of sexual  
15 arousal, sexual gratification, or sexual abuse, is guilty of  
16 misdemeanor sexual battery, punishable by a fine not  
17 exceeding two thousand dollars (\$2,000), or by  
18 imprisonment in a county jail not exceeding six months,  
19 or by both that fine and imprisonment. However, if the  
20 defendant was an employer and the victim was an  
21 employee of the defendant, the misdemeanor sexual  
22 battery shall be punishable by a fine not exceeding three  
23 thousand dollars (\$3,000), by imprisonment in a county  
24 jail not exceeding six months, or by both that fine and  
25 imprisonment. *Any person who violates this subdivision*  
26 *after having entered, without consent, an inhabited*  
27 *dwelling house, the inhabited portion of any other*  
28 *building, or an inhabited trailer coach, as defined in*  
29 *Section 635 of the Vehicle Code, is punishable by*  
30 *imprisonment in a county jail or the state prison, not*  
31 *exceeding one year.* Notwithstanding any other  
32 provision of law, any amount of a fine above two thousand  
33 dollars (\$2,000) which is collected from a defendant for  
34 a violation of this subdivision shall be transmitted to the  
35 State Treasury and, upon appropriation by the  
36 Legislature, distributed to the Department of Fair  
37 Employment and Housing for the purpose of  
38 enforcement of the California Fair Employment and  
39 Housing Act (Part 2.8 (commencing with Section 12900)  
40 of Division 3 of Title 2 of the Government Code),

1 including, but not limited to, laws that proscribe sexual  
2 harassment in places of employment. However, in no  
3 event shall an amount over two thousand dollars (\$2,000)  
4 be transmitted to the State Treasury until all fines,  
5 including any restitution fines that may have been  
6 imposed upon the defendant, have been paid in full.

7 (2) As used in this subdivision, “touches” means  
8 physical contact with another person, whether  
9 accomplished directly, through the clothing of the person  
10 committing the offense, or through the clothing of the  
11 victim.

12 ~~(e) Any person who enters an inhabited dwelling~~  
13 ~~without consent and to touch an intimate part of another~~  
14 ~~person, whether that person is unlawfully restrained by~~  
15 ~~the accused or an accomplice or not, and if the touching~~  
16 ~~is against the will of the person touched and is for the~~  
17 ~~purpose of sexual arousal, sexual gratification, or sexual~~  
18 ~~abuse, is guilty of a felony.~~

19 ~~(f) As used in subdivisions (a), (b), (e), and (d),~~

20 (e) As used in subdivisions (a), (b), and (c), “touches”  
21 means physical contact with the skin of another person  
22 whether accomplished directly or through the clothing of  
23 the person committing the offense.

24 ~~(g)~~

25 (f) As used in this section, the following terms have the  
26 following meanings:

27 (1) “Intimate part” means the sexual organ, anus,  
28 groin, or buttocks of any person, and the breast of a  
29 female.

30 (2) “Sexual battery” does not include the crimes  
31 defined in Section 261 or 289.

32 (3) “Seriously disabled” means a person with severe  
33 physical or sensory disabilities.

34 (4) “Medically incapacitated” means a person who is  
35 incapacitated as a result of prescribed sedatives,  
36 anesthesia, or other medication.

37 (5) “Institutionalized” means a person who is located  
38 voluntarily or involuntarily in a hospital, medical  
39 treatment facility, nursing home, acute care facility, or  
40 mental hospital.

1 (6) “Minor” means a person under 18 years of age.

2 ~~(h)~~

3 (g) This section shall not be construed to limit or  
4 prevent prosecution under any other law which also  
5 proscribes a course of conduct that also is proscribed by  
6 this section.

7 ~~(i)~~

8 (h) In the case of a felony conviction for a violation of  
9 this section, the fact that the defendant was an employer  
10 and the victim was an employee of the defendant shall be  
11 a factor in aggravation in sentencing.

12 ~~(j)~~

13 (i) A person who commits a violation of subdivision  
14 (a), (b), ~~(e), or (d)~~ or (c) against a minor when the  
15 person has a prior felony conviction for a violation of this  
16 section shall be guilty of a felony, punishable by  
17 imprisonment in the state prison for two, three, or four  
18 years and a fine not exceeding ten thousand dollars  
19 (\$10,000).

20 SEC. 2. No reimbursement is required by this act  
21 pursuant to Section 6 of Article XIII B of the California  
22 Constitution because the only costs that may be incurred  
23 by a local agency or school district will be incurred  
24 because this act creates a new crime or infraction,  
25 eliminates a crime or infraction, or changes the penalty  
26 for a crime or infraction, within the meaning of Section  
27 17556 of the Government Code, or changes the definition  
28 of a crime within the meaning of Section 6 of Article  
29 XIII B of the California Constitution.